

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**LELAND VAN KOOTEN AND DARIN
VAN KOOTEN**
Mahaska County, Iowa

ADMINISTRATIVE ORDER
NO. 2007-AFO-34

TO: Leland Van Kooten
1391 205th Street
Leighton, Iowa 50143

Darin Van Kooten
1438 220th Street
Leighton, Iowa 50143

I. SUMMARY

This administrative order requires you to (1) submit to DNR Field Office 5 a written plan for proper closure of the confinement operation which is the subject of this order;(2) remove all manure from the confined buildings; (3) remove all manure (liquids and solids) from the unformed manure storage lagoon, including all solids that have accumulated on the bottom of the basin floor and inner berms; (4) land apply all manure in a manner which will not cause surface or groundwater pollution; and (5) pay a penalty of \$5,500.00 subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Ted Petersen, DNR Field Office #5
Iowa Department of Natural Resources
401 SW 7th Street, Suite I
Des Moines, IA 50309-4611
Phone: 515/725-0268

Relating to appeal rights

Kelli Book, Attorney for the Department
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459, Subchapter III, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LELAND VAN KOOTEN and DARIN VAN KOOTEN

567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Leland Van Kooten and Darin Van Kooten, own and operate an animal feeding operation. The operation at one time consisted of confinement buildings with an unformed storage lagoon and open cattle lots. Currently, the open cattle lots are the only part of the facility being operated. The facility is located on portions of both the NW ¼ and NE ¼ of section 2, Township 75N (Scott Township), Range 17W, in Jasper County. Its local address is 1438 220th Street, Leighton, Iowa 50143.

2. On August 18, 2004, during a routine unformed manure storage inspection, Leland Van Kooten stated to DNR personnel that the confined animal feeding operation and unformed manure storage lagoon at the facility described above were no longer in service.

3. On August 23, 2004, DNR sent Darin Van Kooten a letter regarding the proper closure procedures and providing a closure due date of March 1, 2005.

4. On February 27, 2006, a routine DNR unformed manure storage inspection was completed at the Van Kooten animal feeding operation. DNR personnel left a phone message, but no one from the Van Kootens was present.

5. On February 28, 2006, DNR sent a notice of violation letter to Darin Van Kooten and Leland Van Kooten, informing them of the proper closure procedures and providing a closure due date of May 31, 2006.

6. On June 26, 2006, during a routine inspection of a manure management plan (MMP) at Leland Van Kooten's other confinement operation, a discussion of the cleanup progress at the Van Kooten animal feeding operation occurred between DNR personnel and Leland Van Kooten. Leland Van Kooten stated that they planned to complete the closure, but finding the time to get it done was difficult. The DNR personnel informed him that DNR expected the closure to be completed by the end of 2006.

7. On March 12, 2007, a routine DNR unformed manure storage inspection was completed at the Van Kooten animal feeding operation. After leaving a phone message, no one was present from the Van Kootens.

8. On March 21, 2007, DNR personnel called Leland Van Kooten's cell phone. Mr. Van Kooten's son answered and stated that his father was on vacation, but would give him the message to call DNR when he returned.

9. On April 23, 2007, DNR sent a notice of violation letter to Leland Van Kooten and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LELAND VAN KOOTEN and DARIN VAN KOOTEN

copied Darin Van Kooten. The notice letter stated the proper closure procedures and that this matter was being referred to DNR Legal Services.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(8) states as soon as practical, but no later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operation and its manure control facilities and be land applied. Leland Van Kooten informed DNR personnel in August 2004 that the confined animal feeding operation and unformed manure storage lagoon located in Leighton, Iowa were no longer being used. The Van Kootens have been notified numerous times of the removal requirements and proper closing procedures. As of April 23, 2007, the proper closure procedures had not been performed at this facility. The above-facts disclose a continuous violation of this provision.

3. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land applied in a manner which will not cause surface or groundwater pollution. The Van Kooten animal feeding operation has been closed since August 2004. The Van Kootens have been informed of the removal requirements numerous times. As of April 23, 2007 the manure has not been removed and properly land applied. The above-facts disclose a continuous violation of this provision.

V. ORDER

THEREFORE, in order to redress the above-cited violations, it is hereby ordered that Leland Van Kooten and Darin Van Kooten do the following:

1. Before November 30, 2007, submit a written notification to DNR Field Office 5 of the plans to properly close the confinement operation which is the subject of this order. Include in this plan a proposed start date and identify the contractor that will complete the work.
2. Before December 31, 2007, remove all manure from the confined buildings.
3. Before December 31, 2007, remove all manure (liquid and solids) from the unformed manure storage lagoon, including all solids that have accumulated on the bottom of the basin floor and inner berms.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LELAND VAN KOOTEN and DARIN VAN KOOTEN

4. Before December 31, 2007, land apply all manure in a manner which will not cause surface or groundwater pollution.
5. Notify Field Office 5 when all manure has been removed from the buildings and unformed storage structure so that DNR can schedule an inspection of the site.
6. Pay a penalty of \$5,500.00, within 60 days from the date this order is signed by the Director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC Chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$5,500.00 is assessed effective 30 days from receipt of this order by the Van Kootens, unless this order is appealed within that time, as provided in Part VII of this order. The penalty shall be paid within 60 days of receipt of this order, unless a timely appeal is filed.

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. The Environmental Protection Commission has adopted procedures and criteria for assessment of penalties through 567 IAC Chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty of \$5,500.00. The administrative penalty is assessed to Leland Van Kooten and Darin Van Kooten. The administrative penalty by this order is determined as follows:

Economic Benefit - Leland Van Kooten and Darin Van Kooten are saving time and money by not properly closing the lagoon at the former Van Kooten animal feeding operation. A reasonable estimate for the cost to properly close the lagoon is \$40,000 and the Van Kootens are able to gain an economic advantage by delaying properly closing the lagoon. Therefore, \$2,500.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The lagoon contains manure and the manure has the potential to be released into the environment. The DNR has expended a large amount of staff time in an effort to work with the Van Kootens to have the lagoon properly closed. The continuous violations threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Therefore, \$1,500.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LELAND VAN KOOTEN and DARIN VAN KOOTEN


Culpability – Leland Van Kooten and Darin Van Kooten have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Additionally, the DNR has provided ample time for the Van Kootens to properly remove the manure from the lagoon. The rules allow a six month time frame from the last date there are animals at the facility to remove the manure. The facility has been empty since at least August 2004. The Van Kootens' continuous failure to remove the manure and properly close the lagoon demonstrates a blatant disregard for the rules of the state and the environment. No effort has been made to complete the closure process or inform DNR of the closure plans despite several notices of the violations and the proper closing procedures. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this order but which may arise from the facts summarized in Section "III. Statement of Facts" of this order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
October, 2007.

No Facility; Kelli Book; Field Office 5; Ted Petersen; Ken Hennesius; VIII.D.2c